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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/609,166	06/27/2003	Nathan Proch	202/532	7812
27224	7590	05/20/2005		
ARTHUR FREILICH 9045 CORBIN AVE, #260 NORTHRIDGE, CA 91324-3343			EXAMINER KIM, CHRISTOPHER S	
			ART UNIT 3752	PAPER NUMBER

DATE MAILED: 05/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/609,166

Applicant(s)

PROCH, NATHAN

Examiner

Christopher S. Kim

Art Unit

3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 December 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. The response filed December 27, 2004 is acknowledged.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. The following rejections are maintained from the prior Office action on the basis that the intended use language, such as, "for providing a first signal when the liquid level in said reservoir is less than a predetermined first height mark and for providing a second signal when the liquid level in said reservoir is greater than a predetermined second height mark," and "responsive to said first and second signals for setting a pump-off mode in response to said liquid level being less than first height mark and for preventing setting of said pump-on mode unless said liquid level is greater than said second height mark," has been given no patentable weight.

### ***Claim Rejections - 35 USC § 103***

4. Claims 1-3, 5-30 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ting (6,206,298) in view of Bear (4,852,621).

Ting discloses an apparatus comprising: a reservoir 26; a plenum 30; a pump 14; a visually open flow pathway 12, 34; a controller 24. Ting discloses the limitations of the claimed invention with the exception of the controller including a water level detector.

Bear discloses a detector 25 to sense the level of water in bottle 14 to control pump 27. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided the detector of Bear to the device of Ting to prevent damage of the pump (Bear, column 5, lines 1-14 and 61-68).

Bear discloses that one skilled in the art can provide other similar level control units that are commercially available. (Bear, column 5, lines 11-14).

Regarding claim 17, Ting discloses a light source 20. Mounting the light source in the reservoir is a mere relocation of parts. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have located the light source in the device of Ting in view Bear, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

Regarding claim 19, providing a plurality of light sources is a mere duplication of parts. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided a plurality of light sources in the device of Ting in view Bear, since it has been held that mere duplication of essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

5. Claims 1-14, 20-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nash (5,167,368) in view of Bear (4,852,621).

Nash discloses an apparatus comprising: a reservoir 16; a plenum 34; a pump 50; a visually open flow pathway 26; a controller (switch, column 2, line 66). Nash discloses the limitations of the claimed invention with the exception of the controller including a water level detector. Bear discloses a detector 25 to sense the level of

water in bottle 14 to control pump 27. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided the detector of Bear to the device of Nash to prevent damage of the pump (Bear, column 5, lines 1-14 and 61-68).

Bear discloses that one skilled in the art can provide other similar level control units that are commercially available. (Bear, column 5, lines 11-14).

6. Based on applicant's arguments, the following new grounds of rejections are made on the basis that the intended use language, such as, "for providing a first signal when the liquid level in said reservoir is less than a predetermined first height mark and for providing a second signal when the liquid level in said reservoir is greater than a predetermined second height mark," and "responsive to said first and second signals for setting a pump-off mode in response to said liquid level being less than first height mark and for preventing setting of said pump-on mode unless said liquid level is greater than said second height mark," has been given patentable weight.

***Claim Rejections - 35 USC § 112***

7. Claims 1-32 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for an apparatus comprising two detectors (a first detector to detect a first fluid level and a second detector to detect a second fluid level), does not reasonably provide enablement for an apparatus comprising a detector that senses two fluid levels. The specification does not enable any person skilled in the art

to which it pertains, or with which it is most nearly connected, to make and/or use the invention commensurate in scope with these claims. Claims 1, 20 and 28 recite a detector which senses two different liquid levels in the reservoir. The specification teaches two detectors on pages 10-11, a first detector 50 that senses a first liquid level and a second detector 52 that senses a second liquid level. The specification provides no teaching of a detector that detects both the first liquid level and the second liquid level.

***Claim Rejections - 35 USC § 103***

8. Claims 1-3, 5-30 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ting (6,206,298) in view of Hotine (4,244,385).

Ting discloses an apparatus comprising: a reservoir 26; a plenum 30; a pump 14; a visually open flow pathway 12, 34; a controller 24. Ting discloses the limitations of the claimed invention with the exception of the controller including a water level detector. Hotine discloses a detector 26 to sense the low level of water in well 11 and a detector 29 to sense the high level of water in well 11. Pump 14 is not operational if water falls below detector 26 and cannot be restarted until water rises above detector 29. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided the detectors of Hotine to the device of Ting to prevent damage of the pump and to provide anti-hunt hysteresis mode of operation (Hotine, column 7, lines 8-10 and lines 47-50).

Regarding claim 17, Ting discloses a light source 20. Mounting the light source in the reservoir is a mere relocation of parts. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have located the light source in the device of Ting in view Hotine, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

Regarding claim 19, providing a plurality of light sources is a mere duplication of parts. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided a plurality of light sources in the device of Ting in view Hotine, since it has been held that mere duplication of essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

9. Claims 1-14, 20-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nash (5,167,368) in view of Hotine (4,244,385).

Nash discloses an apparatus comprising: a reservoir 16; a plenum 34; a pump 50; a visually open flow pathway 26; a controller (switch, column 2, line 66). Nash discloses the limitations of the claimed invention with the exception of the controller including a water level detector. Hotine discloses a detector 26 to sense the low level of water in well 11 and a detector 29 to sense the high level of water in well 11. Pump 14 is not operational if water falls below detector 26 and cannot be restarted until water rises above detector 29. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided the detectors of Hotine to the device

of Nash to prevent damage of the pump and to provide anti-hunt hysteresis mode of operation (Hotine, column 7, lines 8-10 and lines 47-50).

### ***Response to Arguments***

10. Applicant's arguments filed December 27, 2004 have been fully considered but they are not persuasive.

Applicant argues that Bear merely teaches to shut off the pump when the water level is low and that Bear does not teach sensing two different height marks for preventing the pump from running dry and for avoiding excessive pump cycling. This is not convincing for the following reasons. First, all pumps having a low water sensor, such as disclosed by Bear, inherently have some degree of hysteresis. Second, patentable weight has not been given to the intended use language, "for..." Applicant's claims merely recite the intended use of the detector and the controller. Applicant has not invoked 35 U.S.C. 112, sixth paragraph. Therefore, the intended use language, "for...", has not been given patentable weight. See MPEP 2114 and 2181, incorporated herein by reference. The specification does not enable the function recited in the intended use language of the claims. Finally, even if the intended use language is given patentable weight, as argued by applicant, sensing two levels to prevent excessive cycling of the pump is well known in the art, as evidenced by Hotine.

Applicant argues "that none of the cited references contains any suggestion which would motivate a person of ordinary skill to modify Ting or Nash to incorporate the Bear teachings." It has been indicated in the prior Office action and again in this



Office action that Bear explicitly provides the motivation for combination. Bear teaches, in column 5, lines 8-9, "...to turn off the pump motor when the bottle is nearly empty." Bear also teaches, in column 5, lines 64-66, "...so that pump 27 will not be damaged by running without water."

### ***Conclusion***


11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher S. Kim whose telephone number is (571) 272-4905. The examiner can normally be reached on Monday - Thursday, 6:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel can be reached on (571) 272-4919. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher S. Kim  
Primary Examiner  
Art Unit 3752

CK